

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 88

AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 33-38-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.

(b) A participant whose employment as judge is terminated, regardless of cause, is entitled to a retirement annuity beginning on the date specified by the participant in a written application, if the following conditions are met:

- (1) The date the annuity begins is not:
 - (A) before the date of final termination of employment by the participant; or
 - (B) the date thirty (30) days before the receipt of the participant's written application by the board.
- (2) The participant:
 - (A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;
 - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or
 - (C) has become permanently disabled.
- (3) The participant is not receiving a salary from the state for services currently ~~performed; except for services rendered in the~~

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~~capacity of judge pro tempore or senior judge. performed as:~~

(A) a judge (as defined in IC 33-38-6-7); or

(B) a magistrate under IC 33-23-5.

(c) A participant:

(1) who:

(A) elects to accept retirement after June 30, 1977; and

(B) is at least sixty-five (65) years of age; or

(2) who:

(A) elects to accept retirement after June 30, 1999;

(B) is at least fifty-five (55) years of age; and

(C) meets the requirements under subsection (b)(2)(B);

is entitled to an annual retirement benefit as calculated in subsection (d).

(d) The annual retirement benefit for a participant who meets the requirements of subsection (c) equals the product of:

(1) the salary being paid for the office that the participant held at

the time of the participant's separation from service; multiplied by

(2) the percentage prescribed in the following table:

TABLE A

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. A participant who elects to accept retirement before July 1, 1977, is entitled to an annual retirement benefit that equals the average of the benefit computed under this

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subsection and the benefit the participant would have received under IC 33-38-6 as in effect on June 30, 1977.

(e) If the annual retirement benefit of a participant who began service as a judge before July 1, 1977, as computed under subsection (d), is less than the amount the participant would have received under IC 33-38-6 as in effect on June 30, 1977, the participant is entitled to receive the greater amount as the participant's annual retirement benefit instead of the benefit computed under subsection (d).

(f) Except as provided in subsections (b)(2)(B) and (d), if a participant who elects to accept retirement after June 30, 1977, has not attained sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

(g) A participant who is permanently disabled is entitled to an annual benefit equal to the product of:

- (1) the salary being paid for the office that the participant held at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

TABLE B

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight

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(8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(h) The surviving spouse or surviving child or children, as designated by the participant, of a participant who has qualified before July 1, 1977, to receive the retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, shall, upon the death of such participant, be entitled to an annuity in an amount equal to the greater of:

- (1) the sum of:
 - (A) two thousand dollars (\$2,000); plus
 - (B) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of the participant's death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits prior to the participant's death; or
- (2) the amount determined under the following table:

TABLE C

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(i) If a participant who qualifies after June 30, 1977, and before July 1, 1983, to receive a retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, dies, the participant's surviving spouse or surviving child or children, as designated by the participant, is or are entitled to an annuity in an amount equal to the greater of:

- (1) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before death; or
- (2) the amount determined under TABLE C in subsection (h)(2).

(j) If a participant:

- (1) dies after June 30, 1983; and
- (2) on the date of the participant's death:
 - (A) was receiving benefits under this chapter;
 - (B) had completed at least eight (8) years of service and was in service as a judge;



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(C) was permanently disabled; or

(D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit; the participant's surviving spouse or surviving child or children, as designated by the participant, is or are entitled, regardless of the participant's age, to an annuity in an amount equal to the greater of the amount determined under TABLE C in subsection (h)(2) or fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits on the participant's date of death, with reductions as necessary under subsection (f).

(k) Notwithstanding subsection (j), if a participant:

- (1) died after June 30, 1983, and before July 1, 1985; and
- (2) was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the surviving spouse of a permanently disabled participant entitled to benefits under subsection (i).

(l) The annuity payable to a surviving child or children under subsection (h), (i), or (j), is subject to the following:

- (1) The total monthly benefit payable to a surviving child or children is equal to the same monthly annuity that was to have been payable to the surviving spouse.
- (2) If there is more than one (1) child designated by the participant, then the children are entitled to share the annuity in equal monthly amounts.
- (3) Each child entitled to an annuity shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.
- (4) Upon the cessation of payments to one (1) designated child, if there is at least one (1) other child then surviving and still entitled to payments, the remaining child or children shall share equally the annuity. If the surviving spouse of the participant is surviving upon the cessation of payments to all designated children, the surviving spouse will then receive the annuity for the remainder of the surviving spouse's life.
- (5) The annuity shall be payable to the participant's surviving spouse if any of the following occur:
 - (A) No child named as a beneficiary by a participant survives the participant.
 - (B) No children designated by the participant are entitled to an

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annuity due to their age at the time of death of the participant.

(C) A designation is not made.

(6) An annuity payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant.

SECTION 2. IC 33-38-8-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. A participant whose employment as judge is terminated is entitled to a retirement benefit computed under section 14 of this chapter, beginning on the date specified by the participant in a written application, if the following conditions are met:

- (1) The date on which the benefit begins is not:
 - (A) before the date of final termination of employment of the participant; or
 - (B) the date thirty (30) days before the receipt of the application by the board.
- (2) The participant:
 - (A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;
 - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or
 - (C) has become permanently disabled.
- (3) The participant is not receiving a salary from the state for services currently performed; ~~except for services rendered in the capacity of judge pro tempore or senior judge: performed as:~~
 - (A) a judge (as defined in IC 33-38-6-7); or
 - (B) a magistrate under IC 33-23-5.

SECTION 3. [EFFECTIVE JULY 1, 2005] IC 33-38-7-11, as amended by this act, applies to participants in the judges' 1977 retirement, disability, and death benefit system regardless of whether they:

- (1) retired before July 1, 2005; or
- (2) retire after June 30, 2005.

However, IC 33-38-7-11, as amended by this act, applies only to benefits first payable after June 30, 2005.

SECTION 4. [EFFECTIVE JULY 1, 2005] IC 33-38-8-13, as amended by this act, applies to participants in the judges' 1985 retirement, disability, and death benefit system regardless of whether they:

- (1) retired before July 1, 2005; or



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(2) retire after June 30, 2005.

However, IC 33-38-8-13, as amended by this act, applies only to benefits first payable after June 30, 2005.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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